

## **REMARKS**

Claims 1 – 24 are pending and are presented for reconsideration.

Independent claims 1, 9, 23 and 24 and dependent claim 8 have been amended to overcome the rejections under 35 U.S.C. § 112, second paragraph.<sup>1</sup>

In particular, in response to the Examiner's comment at ¶ 3 of page 2 in the Office Action, claim 1 has been corrected so that it now refers to "said open upper end of the container wall" in paragraph c) line 24 of the claim. Further, antecedent basis for this phrase is positively set forth in paragraph a), lines 8 – 10 of the claim, which states, "said container wall having a longitudinal axis substantially centered within said container wall, and having a plane defined by said open upper end of the container wall."<sup>2</sup> Thus claim 1 has also been appropriately corrected in response to the Examiner's comment at ¶ 4 of the Office Action. Claims 9, 23 and 24 have

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<sup>1</sup> The Office Action referenced claims 1 – 23 in the rejection. However, presumably claim 24 should have included since like claim 23, claim 24 refers to "the goblet" in line 7.

<sup>2</sup> Support is set forth in the drawings (see the plane shown at 22 at the open upper end of the container wall, Figure 2) and in the specification ("The upper horizontal cross-section can be taken in a horizontal plane near the upper end of the goblet. . . ." P. 4, lines 26 – 27.). Moreover, and as noted in applicant's prior response, the original language in the claims defined the longitudinal axis as "substantially centered at one end within a plane defined on one end of the longitudinal axis by said open upper end of the goblet, and substantially centered at the other end of the axis within a horizontal plane defined on the other end of the axis by said lower opening." The specification states at page 3 that "The goblet 10 also can have a longitudinal axis 26 that can be substantially centered in the goblet, or within the container wall." The specification also states at page 4 lines 23 – 28 that "The goblet 10 can have an upper horizontal cross-section and a lower horizontal cross-section that are non-concentric, ... The upper horizontal cross-section can be taken in a horizontal plane near the upper end of the goblet, while the lower horizontal cross-section can be taken in a horizontal plane near the bottom of the goblet."

As noted in the last teleconference held with the Examiner, if the longitudinal axis is centered within the goblet or container wall, then it also follows that the longitudinal axis is centered at the planes defined by the upper and lower openings or cross-sections of the goblet or container wall. Accordingly, as expressed in that teleconference, there is clearly written description supporting the original language of the independent claims.

However, since the Examiner appeared to continue to be troubled about whether this language adequately supported the original language in the claim, and particularly since replacing that original language with the language as presented in the last amendment does not narrow the scope of the claims in any way, applicant simply agreed to disagree over this issue and move on by replacing the original claim language with the language presently in the claims. Applicant continues, however, to reserve the right to challenge the rejection of the original language as not supported by the written description should that become either necessary or desirable in applicant's view.

likewise been amended in the same way as claim 1 in response to the objection noted by the Examiner in ¶ 6.<sup>3</sup>

Claims 8, 23 and 24 have been corrected in response to the Examiner's objection to the phrase "the goblet" (¶¶ 5 & 7 of the Action) by replacing that phrase in each instance with "the container wall."

In view of the foregoing, the rejections under section 112, second paragraph are believed to have been overcome by the amendments presented in claims 1, 8, 9, 23 and 24. Favorable reconsideration and withdrawal of this rejection is respectfully requested.

The claims were also rejected in the final Office Action as either anticipated by Daniels (claims 1, 8 and 9), or as obvious over Daniels in view of Brewer (claims 2 – 7, 10 – 22 and 23 – 24). The Examiner noted that "Because of the indefinite nature of these claims, it is unclear whether section 102 or 103 is the appropriate basis for rejection." In particular, to the extent the phrase "the plane defined by said open upper edge" in claims 1 and 9 was indefinite as lacking antecedent basis, those claims were apparently interpreted as not being limited by that phrase and thus anticipated by Daniels.

Since the rejections under section 112, second paragraph have been corrected in each instance, it is clear that Daniels does not anticipate the claims, and that ground of rejection is respectfully requested to be withdrawn.

In the final Office Action the Examiner further noted, however, that "In any case, to the extent that the claim requires [sic – claims require] a longitudinal axis of the container to be 'off-axis' with respect to the rotational axis (and it is not at all clear that there is such a requirement), Brewer is relied upon for such a teaching."

As presented herein for reconsideration, claim 1 defines a goblet device configured for use with a motorized base as a food mixer. The device comprises "a container wall having an upper edge forming an opening which defines an open upper end of the container wall, and having a lower opening adapted for horizontal coupling to a mixing assembly." The container wall has "a longitudinal axis substantially centered within said container wall, *and having a plane defined by said open upper end of the container wall.*" Claim 1 further defines the goblet

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<sup>3</sup> While technically only claims 1 and 9 were objected to as lacking antecedent basis for the phrase noted, claims 23 and 24 have been amended at paragraphs a) and c) in the same fashion to insure that they likewise have clear antecedent basis consistent with the other independent claims.

device by stating that *"the container wall and the mixing assembly are angled relative to one another in that the plane defined by said open upper end of the container wall is not perpendicular relative to the rotational axis of the mixing assembly so as to form an off-axis configuration resulting in more efficient mixing action."* (Emphasis added). Independent claims 9, 23 and 24 each contain the same or similar language.

This clearly defines over Brewer, both singly or in combination with Daniels, as previously discussed and agreed with the Examiner. Brewer, which was cited and applied in the Office Action of Oct. 4, 2005, was specifically discussed at the interview of Nov. 14, 2005. In that Interview Summary the Examiner noted that applicant's representative had made "A proposal to amend claim 1 to require that the container and the mixing assembly are angled relative to one another in that the plane defined by the upper edge of the mixer is not perpendicular to the rotational axis of the mixing assembly." The Examiner went on to note in the Interview Summary that *"It was agreed that this overcomes the previously applied prior art [e.g., Brewer and Daniels]."* (Emphasis and bracketed statement added).

Since the principal issue in this Office Action appears to be correcting the claims to make sure that the limitation as discussed at the Nov. 14<sup>th</sup> Interview has been properly set forth in the claims in a way that is both definite and supported by proper antecedent basis as required by section 112, second paragraph, it would follow that resolution of that issue overcomes Brewer and Daniels for the reasons discussed and as agreed in the Interview Summary of Nov. 14<sup>th</sup>, as noted above.

In view of the above favorable reconsideration and allowance is respectfully requested.

In the event the Examiner finds any remaining impediment to allowance the Examiner is requested to contact the undersigned attorney by telephone to resolve the matter, where possible.

Dated this 27th day of November, 2006.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick D. Nydegger". The signature is fluid and cursive, with the first name "Rick" being more prominent.

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